

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ANGEL RIVERA,)
 Petitioner,)
)
v.)
)
JOHN ASHCROFT,¹)
 Respondent.)
_____)

CIVIL ACTION
NO. 05-10629-JLT

**RESPONDENT'S MOTION TO DISMISS WITH PREJUDICE
PETITION FOR WRIT OF HABEAS CORPUS**

The respondent hereby moves this Honorable Court to dismiss with prejudice the Petition for Writ of Habeas Corpus filed by the petitioner, Angel Rivera. As grounds, the respondent states that the petition is time barred pursuant to 28 U.S.C. § 2244(d)(1). The respondent relies upon the accompanying memorandum of law in support of his motion.

Respectfully submitted,

THOMAS F. REILLY
Attorney General

/s/ Daniel I. Smulow
Daniel I. Smulow, BBO # 641668
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200, ext. 2949

Date: April 25, 2005

¹ The respondent's motion to substitute Michael A. Thompson, superintendent of M.C.I. - Shirley, for John Ashcroft, former United States Attorney General, is currently pending before this Court.

Certificate of Compliance with Local Rule 7.1(A)(2)

I, Daniel I. Smulow, hereby certify that I am unable to consult with Mr. Rivera because he is presently incarcerated. In light of the nature of the relief sought by this motion, however, it is my belief that we would be unable to agree-upon or narrow the issues.

/s/ Daniel I. Smulow
Daniel I. Smulow

Certificate of Service

I hereby certify that a true copy of the above document was served on Angel Rivera, M.C.I. - Shirley, P.O. Box 1218, Shirley, MA 01464, by first class mail, postage prepaid, on April 25, 2005.

/s/ Daniel I. Smulow
Daniel I. Smulow